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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/069,955	03/07/2002	Hitoshi Uchida	020227	4539

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WESTERMAN, HATTORI, DANIELS & ADRIAN, LLP  
1250 CONNECTICUT AVENUE, NW  
SUITE 700  
WASHINGTON, DC 20036

EXAMINER
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YEE, DEBORAH

ART UNIT	PAPER NUMBER
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1742

DATE MAILED: 03/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/069,955

Applicant(s)

UCHIDA ET AL. 

Examiner

Deborah Yee

Art Unit

1742

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12-8-03
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) 20-28 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_.

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Japanese patent 61-291939 which was submitted by applicant.

Palladium alloy 11 in Table 3 on page 235 has a composition containing 13%phosphorus with a homogeneous solubility metal, Ni, which meets the recited claim.

Claims 13 to 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Feussner (US Patent 2,123,330).

The prior art alloys C and D on lines 16-27 on page 2 meet the claimed composition. Note that the additional element, Ag, would not be excluded from applicant's limitation "comprising". Moreover, even though prior art does not teach using the alloy as a brazing filler as recited by the claims, such would not be a patentable difference since it is merely applicant's future and intended use.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2 to 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Japanese patent 61-291939.

The English abstract and claim 2 on page 231 discloses a brazing filler metal having a composition that can contain Pt and/or Pd, Ni and/or Cu and P at wt% (mole%) ranges which overlap those recited by the claims. It has been held that one of ordinary skill in the art at the time the invention was made would have considered the claimed composition to be obvious because overlapping ranges in a composition with similar brazing properties are considered to establish a prima facie case of obviousness, see MPEP 2144.05.

Claims 9 to 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Japanese patent 54-109049.

The English abstract of JP'049 discloses a brazing filler metal having a composition comprising Pd, Cu, N and P in wt% ranges that overlap those recited by the claims. It has been held that one of ordinary skill in the art at the time the invention was made would have considered the claimed composition to be obvious because

Art Unit: 1742

overlapping ranges in a composition with similar brazing properties are considered to establish a prima facie case of obviousness, see MPEP 2144.05.

Moreover, specific examples disclosed on page 259 closely meet the claimed composition except for the P. It would be obvious to incorporate 0.3 to 8% P since its English abstract teaches up to 8% P is added to help improve fluidity and wettability during brazing.

Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Feussner (US Patent 2,123,330).

Feussner discloses alloys C and D on lines 15 to 30 of column 1 which meet the claimed composition except for 4% Ni which is slightly outside applicant's claimed Ni range of 5 to 31%. It would, however, be obvious to increase the Ni content since a broad Ni range of up to 10% is taught in claim 1. Also note that the additional element, Ag, would not be excluded from applicant's limitation "comprising". Moreover, even though prior art does not teach using the alloy as a brazing filler as recited by the claims, such would not be a patentable difference since it is merely applicant's future and intended use.

#### ***Election/Restrictions***

Claims 20 to 28 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Deborah Yee whose telephone number is 571-272-1253. The examiner can normally be reached on Monday-Friday from 6:00 to 2:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Roy King can be reached on 571-272-1244.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

dy



**DEBORAH YEE**  
**PRIMARY EXAMINER**